

PROCEEDINGS OF THE COMMON COUNCIL
IN Special SESSION
Saturday, March 30 1985

CITY OF FORT WAYNE, INDIANA
JOURNAL OF THE PROCEEDINGS
OF THE COMMON COUNCIL

THE COMMON COUNCIL OF THE CITY OF FORT WAYNE MET IN THE
COUNCIL CHAMBERS Saturday ~~EVENING~~^{morning} March 30 A.D., 1985,
IN _____ SESSION. PRESIDENT _____
IN THE CHAIR, COUNCIL ATTORNEY Stanley A. Levine, AND
Sandra E. Kennedy CLERK, AT THE DESK, PRESENT THE FOLLOWING
MEMBERS VIZ:

BRADBURY Present, BURNS Present, EISBART Present,
GIAQUINTA Present, HENRY Present, REDD Present,
SCHMIDT Present, STIER Present, TALARICO Present.

ABSENT: _____

COUNCILMAN: _____, _____, _____,

THE INVOCATION WAS GIVEN BY _____

THE MINUTES OF THE LAST REGULAR _____, 19____,

_____, 19____,

SPECIAL _____, 19____,

SESSION HAVING BEEN DELIVERED TO THE COUNCIL, WERE, ON MOTION, APPROVED AND PUBLISHED.

CALL, CONSENT AND WAIVER OF NOTICE OF A SPECIAL
MEETING OF THE COMMON COUNCIL OF THE CITY OF
FORT WAYNE, INDIANA TO BE HELD

SATURDAY, MARCH 30, 1985

ROOM 128 - COUNCIL CONFERENCE ROOM
8:00 A.M.

WE, THE UNDERSIGNED, BEING ALL OF THE MEMBERS OF THE COMMON
COUNCIL OF THE CITY OF FORT WAYNE, INDIANA, DO HEREBY CALL A SPECIAL
MEETING OF SAID COUNCIL TO BE HELD ON Saturday, March 30, 1985,
AT 8:00 O'CLOCK A.M., E.S.T., AND JOINTLY AND SEVERALLY
WAIVE NOTICE OF THE TIME, PLACE AND PURPOSE OF SAID MEETING AND CONSENT
THAT SAME BE HELD ON THE AFORESAID DATE FOR THE PURPOSE OF
placing Bill No. G-85-03-01 - AN ORDINANCE amending Chapter 33 of
the Municipal Code of the City of Fort Wayne, Indiana (Flood Plain
Ordinance) for consideration.

Mark C. G. [Signature]

[Signature]

[Signature]

[Signature]

James [Signature]

Janet G. Bradbury

Samuel J. Talarico

DATED THIS March 26, 1985.

Sandra E. Kennedy

SANDRA E. KENNEDY, CITY CLERK

SEAL

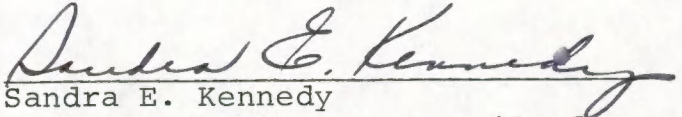
NOTICE OF A SPECIAL MEETING OF THE
COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA

TO: _____

You are hereby notified that the Common Council of the City of Fort Wayne, Indiana, will hold a special meeting of SATURDAY, MARCH 30, 1985, at 8:00 o'clock A.M., E.S.T., IN THE COMMON COUNCIL CONFERENCE ROOM 128, ONE MAIN STREET, FORT WAYNE, INDIANA.

Said meeting shall be held for the purpose of placing Bill No. G-85-03-01 AN ORDINANCE amending Chapter 33 of the Municipal Code of the City of Fort Wayne, Indiana, (Flood Plain District Ordinance) for consideration. (as amended)

DATED: March 27, 1985

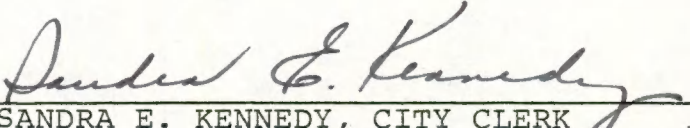

Sandra E. Kennedy
Clerk of the Common Council of
the City of Fort Wayne, Indiana

THE COUNCIL THEN ADJOURNED.

CERTIFICATE

I hereby certify that I am the duly elected, acting and incumbent City Clerk of Fort Wayne, Indiana and as such the custodian of the records of the Common Council of said City and that the above and foregoing is the true, full and complete record of the proceedings of the Common Council of the City of Fort Wayne, Indiana for its Special Session, held on Saturday the 30th day of March, 1985, that the numbered ordinances and resolutions shown therein were duly adopted by said Common Council on said date and were presented by me to the Mayor of the City of Fort Wayne and were signed and approved or disapproved by said Mayor as and on the dates shown as to each such ordinance and resolution respectively; and that all such records, proceedings, ordinances, and resolutions remain on file and record in my office.

WITNESS my hand and the official seal of the City of Fort Wayne, Indiana, this 1st day of April, 1985,


SANDRA E. KENNEDY, CITY CLERK

Bill No. G-85-03-01
(as amended)

GENERAL ORDINANCE NO. 908-85

AN ORDINANCE amending Chapter 33 of the
Municipal Code of the City of Fort Wayne,
Indiana.

BE IT ORDAINED BY THE COMMON COUNCIL OF THE
WAYNE, INDIANA:

SECTION 1. Article X, Section 33-41 to Section
are repealed and the following is hereby enacted.

SECTION 2. That this Ordinance shall be in full force
and effect from and after its passage and approval by the Mayor.

ARTICLE X - FLOOD PLAIN DISTRICT

Section 33-41. GENERAL CRITERIA FOR FLOOD PLAIN REGULATIONS

A. Objectives - The objective of this article is to provide
sound flood plain regulation for Fort Wayne's rivers and
streams in order better to:

1. Protect human life and health.
2. Protect individuals from buying lands and structures
which are unsuited for intended purposes because of
flood hazards.
3. Provide for public awareness of the flooding poten-
tial.
4. Minimize public and private property damage.
5. Minimize surface and groundwater pollution which will
affect human, animal, or plant life.

Please keep
with
file
corrections
(underlined)

6. Control flood plain uses such as filling, dumping, storage of material, structures, buildings, and any other which, acting alone or in combination with other existing or future uses, ~~might~~ ^vcause damaging flood heights and velocities by obstructing flows and reducing water storage capacity.
7. Control development which will, when acting alone or in combination with other development or features, ~~Create~~ cause an unjustified vulnerability to floods, flood damage, and an additional burden to the public to pay the costs of rescue, relief, emergency preparedness measures, sandbagging, pumping, and temporary dikes or levees.
8. Control development which will, when acting alone or in combination with other development or features, ~~create~~ cause an additional burden to the public for business interruptions, factory closings, disruption of transportation routes, interference with utility services, and other factors that result in loss of wages, sales, production, and tax write-offs.
9. Help maintain a stable tax base by the preservation or enhancement of property values for future flood plain development.
10. Minimize areas of the flood plain that are blighted by floods so that property values in and adjacent to the flood plain will be preserved.

11. Maximize the use of flood plains for parks, open spaces, and public recreation purposes.

Section 33-42. DEFINITIONS

Whenever used or referred to in this ordinance unless a different meaning appears from the context.

- A. Development - any man-made change to improved or unimproved real estate, including but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation, substantial improvements, placement of mobile homes, subdivision of land, in-fill, or drilling operations.
- B. Flood or Floodwater - the water of any river, stream or lake which is above the bank and/or outside the channel and banks of such river, stream, or lake.
- C. Flood Plain - the area adjoining a river, stream, or lake which has been or may hereafter be covered by floodwater and consists of all floodway, floodway fringe unprotected, and floodway fringe protected areas that are subject to flooding by the regulatory flood. This area is shown as unnumbered A-Zones on the ~~FEDERAL~~ Flood Insurance Rate Maps.
- D. Flood-Proofing - a combination of structural provisions, changes, or adjustments to properties and structures subject to flood primarily for the reduction or elimination of flood damages to properties, water and sanitary facilities,

structures, and contents of buildings in a flood plain.
Flood proofing must be water tight below the regulatory
flood elevation.

- E. Flood-Proofed Building - a commercial or industrial building designed to exclude floodwater from the interior of that building. All such flood-proofing shall be adequate to withstand the flood depths, pressures, velocities, impact and uplift forces and other factors associated with the regulatory flood.
- F. Flood Protection Grade - (i) nonflood-proofed buildings: the elevation of the lowest floor of a building or structure. If a building contains a basement, the basement floor is considered the lowest floor. (ii) flood-proofed building: if a building is flood-proofed as hereinafter defined, the term "flood protection grade" applies to the water surface elevation for which the building is protected.
- G. Floodway Area (FW) - The channel of a river or stream and those portions of the flood plain adjoining the channel that are determined by the Indiana Department of Natural Resources and FEMA as necessary to carry and discharge the regulatory flood of any channel, water course or flood plain.
- H. Floodway Fringe (FF) - means those portions of the flood plain lying outside the floodway area.
- I. Floodway Fringe Unprotected Area (FFU) - That portion of the flood plain lying outside of the floodway which is

not included in the Floodway Fringe Protected Area. (This definition only applies to Section 33.46)

- J. Floodway Fringe Protected Area (FFP) - That portion of the flood plain lying outside of the floodway and determined by the City Department charged with floodwater control to be reasonably protected from floodwaters so that the chances of flooding are minimized. The Floodway Fringe Protected areas shall be approved by the Indiana Department of Natural Resources and will be shown on an overlay district map maintained by the City. (This definition only applies to Section 33.46)
- K. In-fill - new construction or substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the regulatory flood elevation.
- L. Obstruction - structure, object or other matter in, along, across, or projecting into any channel, water course or flood plain river or stream, or flood hazard area which may impede, retard, or change the direction of the flow of water.
- M. Regulatory Flood - a flood having a peak discharge which can be expected to be equalled or exceeded on the average of once in a 100-year period, as calculated by a method and procedure which is acceptable to and provided by the Indiana Department of Natural Resources. The regulatory flood has a 1 percent probability of occurring in any given year.

- N. Regulatory Flood Profile - a longitudinal profile along the thread of a stream showing the maximum water surface elevations attained by the regulatory flood.
- O. Regulatory Floodway - the channel of a river or stream and those portions of the flood plain adjoining the channel which are ~~reasonably~~ ~~efficiently~~ required to carry and discharge the peak flow of the regulatory flood of any channel or watercourse with no increase in the regulatory flood elevation.
- P. River or Stream - all open channels, whether natural, man-made, or modified by man, which carry or discharge water.
- Q. Structure - walled and roofed buildings, including gas or liquid storage tanks, and mobile homes that are principally above ground.

Section 33-43. FLOOD PLAIN DISTRICT BOUNDARIES

The areal extent of the flood plain area shall include all land subject to inundation by the regulatory flood as shown on maps prepared by the Federal Emergency Management Agency in a scientific and engineering report entitled "The Flood Insurance Study for the City of Fort Wayne, Indiana" dated October 3, 1984, with accompanying Flood Boundary-Floodway Maps and Flood Insurance Rate Map dated April 3, 1985, along with any subsequent revisions to text or maps. In cases where the floodway, floodway fringe, peak discharge and regulatory profile have not been provided by

the Federal Emergency Management Agency, this data shall be determined and approved by the Indiana Department of Natural Resources utilizing the best available technology. In addition to the Flood Insurance Study Maps, any maps prepared or supplied by the Department of Natural Resources which allow for a better flood plain delineation shall be used by the Zoning Enforcement Officer provided that these maps shall be at least as restrictive as the FIS maps. Amendments to the text of Flood Plain District and FIS maps can be made provided that no change will be made in the delineation of flood plain, floodway, or regulatory flood elevation and the text of Flood Plain District without the prior approval of FEMA.

**Section 33-44. PROCEDURES FOR DEVELOPMENT
IN FLOOD PLAIN DISTRICTS**

- A. No development in the Flood Plain Districts shall take place unless the Zoning Enforcement Officer first grants an Improvement Location Permit. The Zoning Enforcement Officer shall review all applications for Improvement Location Permits for development including new construction, additions to existing construction, or other development to ascertain whether the proposed development lies in the Flood Plain District. If the Permit Application pertains to property in the Flood Plain District, then the applicant must meet the following criteria before receiving an Improvement Location Permit and Certificate of Occupancy.
- B. In the enforcement of this article and in granting permits and certificates, the Division of Community Development

and Planning shall assure that all of the standards contained in 44 CFR, Section 60.3 Subsection (d) and Indiana Department of Natural Resources requirements pertaining to state and federal permits, building permit review, subdivision review, flood-proofing nonresidential structures, mobile home tie down standards, utility construction, record keeping (including lowest floor elevation) and stream and river alteration and maintenance have been met.

1. Record Keeping - For every permit issued in the flood plain, record shall be kept of the 100-year flood elevation at that location, and the elevation of the lowest floor of the structure as designed and built.
2. Record Keeping for Nonresidential Building - The developer shall provide as part of an application for an Improvement Location Permit a certificate from a registered professional engineer or architect who shall certify that the flood-proofing methods are adequate to withstand the flood depths, pressures, velocities, impact and uplift forces and other factors associated with the regulatory flood. A record of such certificates indicating the specific elevation (in relation to mean sea level) to which such structures are flood-proofed shall be maintained with the Division of Community Development and Planning and recorded at the applicants expense in the County Records Office.

C. Procedures for development within the floodway

1. There will be no development of any kind that will

increase the regulatory flood elevation including any structure, mobile home, fill, deposit or obstruction within those portions of the floodway which are currently undeveloped, except necessary public utilities, construction for flood control purposes, and for the use of parks, open spaces, and public recreation.

2. If an application for an Improvement Location Permit lies in an identified floodway, then the Zoning Enforcement Officer shall deny the permit, except that applications for parks, open spaces, public recreation, necessary public utilities, devices for flood control purposes, enlargement, expansion or alteration or nonconforming use and rebuilding of any structure damaged by flood, fire, explosion, act of God, or the public enemy shall be forwarded to the Board of Zoning Appeals for a variance in accordance with the procedures set forth in Sections 33-45 and 33-46.
3. Expansions of legal nonconforming uses shall be permitted only as provided in Section 33-45.
4. No new structures and enlargements or expansion of legal nonconforming use shall be permitted within the floodway areas.

D. Procedures for development within the floodway fringe:

1. For residential structures the lowest floor including the basement must be at least two (2) feet above the regulatory flood elevation.

2. For nonresidential structures the lowest floor including the basement must be at least two (2) feet above the regulatory flood elevation or adequate flood-proofing techniques must be used to that elevation.
3. All structures to be erected or expanded in the floodway fringe shall have a low flooddamage potential.
4. The structure or structures, if permitted, shall be constructed and placed on the building site so as to offer the minimum obstruction to the flow of floodwaters.
 - (i) Whenever possible, structures shall be constructed with the longitudinal axis parallel to the direction of the flow of floodwaters.
 - (ii) So far as practicable, structures shall be placed approximately on the same flood flow lines as those of adjoining structures.
5. Structures shall be firmly anchored to prevent flotation which may result in damage to other structures, restriction of bridge openings, and blockage of other narrow sections of the stream or river.
6. Utility equipment such as electrical and heating equipment shall be constructed at least two (2) feet above the regulatory flood elevation for the particular area, unless the building is flood-proofed.

7. New water, sewer, or septic systems shall be designed to minimize infiltration of flood waters.

E. Storage of material and equipment in the Floodway Fringe shall be governed by the following:

1. The storing or processing of materials that are in time of flooding buoyant, flammable, explosive, or could be injurious to human, animal, or plant life is prohibited.
2. Storage of other material or equipment may be allowed if not subject to major damage by floods and if firmly anchored to prevent flotation.

F. Fill and In-fill: Fill and In-fill will be permitted only in the floodway fringe areas and only in accordance with the following procedures:

1. For any fill and in-fill proposed to be deposited in the floodway fringe, it must be shown that the advantages outweigh the detriment caused by the fill and in-fill and to be of some beneficial purpose. The amount of the fill and in-fill shall not be greater than is shown on a plan submitted by the owner showing the uses to which the filled land will be put and the final dimensions of the proposed fill. All fill and in-fill placed within the floodway fringe shall

be obtained from other areas within the flood plain.

The location within the flood plain from which the fill is taken shall be graded and seeded to prevent erosion and sedimentation.

2. Such fill or other material shall be protected against erosion by riprap, vegetation cover, or bulkheading.

- G. The Director of the Division of Community Department and Planning or his/her representative, may attach such conditions in the granting of Improvement Location Permits and Certificate of Occupancy Permits as it deems necessary to further the purpose of this article. Any decision of the Director of the Division of Community Development and Planning or his/her representative, may be appealed to the Board of Zoning Appeals.

Section 33-45. NONCONFORMING USES

- A. All land uses existing at the time of adoption of this article in flood plain areas not in full compliance with this article shall be considered nonconforming uses.
- B. Except for normal repair and maintenance, there shall be no enlargement or expansion of a building which constitutes a legal nonconforming use within the floodway area.
- C. Except for normal repair and maintenance, any structure which constitutes a legal nonconforming use within the floodway fringe may be altered, enlarged, or extended,

on a one-time basis at the existing grade and floor elevations provided that other requirements of Section 33-44 are met, and such alterations, enlargements or extensions do not increase the value of the structure, excluding the value of the land, by more than forty percent (40%) of its pre-improvement market value. If the enlargement, extension or alteration is greater than 40% of its pre-improvement market value, it is permitted as long as the alterations, enlargements or extensions are permanently changed to a conforming use as to the grade and floor elevations and other requirements in accordance with the procedures for development in Section 33-44.

- D. Any structure which constitutes a legal nonconforming use which is damaged by flood, fire, explosion, act of God, the public enemy, other disaster or accident, may be restored to its original dimensions and condition at the existing grade and flood elevations, provided the damage has not reduced the value of the building, excluding the value of the land, by more than forty percent (40%) of its pre-damaged market value. If the structure is damaged more than forty percent (40%) of its pre-damaged market value, then the structure can be reconstructed or repaired only if permanently changed to a conforming use as to the grade and floor elevations and other requirements in accordance with the procedures for development in Section 33-44.
- E. Any repairs, alterations, enlargements, or extensions of any existing legal nonconforming use which use does not involve a structure, is subject to the provisions of this article.

Section 33-46. VARIANCES

- A. If this article prohibits a proposed development in a flood plain area, a person seeking such use or development may apply to the Board of Zoning Appeals for a variance from the provisions of this article, except for a new development and expansion or enlargement of legal nonconforming use in the floodway. Prior to the Board of Zoning Appeals consideration of the variance request for a variance in the floodway, the application for the variance shall be forwarded to the Indiana Department of Natural Resources for review and comment. All terms and conditions imposed or recommended by the Indiana Department of Natural Resources shall be incorporated into the issuance of any variance and subsequent permit.
- B. In determining whether to grant a variance, the Board of Zoning Appeals shall consider the following matters along with the other provisions of this article:
1. The danger to life and property due to increased flood heights or velocities caused by encroachments.
 2. The danger that materials may be swept on to other lands or downstream to the injury of others.
 3. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination and unsanitary conditions as affected by

the variance.

4. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners.
5. The importance of the services provided by the proposed facility to the community.
6. The requirements of the facility for a waterfront location.
7. The availability of alternative locations not subject to flood for the proposed use.
8. The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.
9. The relationship of the proposed use to the Comprehensive Plan and flood plain management program for the area.
10. The safety of access to the property in time of flood for ordinary and emergency vehicles.
11. The projected height, velocity, duration, rate of rise and sediment transport of the floodwaters expected at the site.
12. The structure on which reconstruction, rehabilitation

or restoration is proposed is listed on the National Register of Historic Places, or State, or Local Inventory of Historic Places.

13. Whether the subject property is located in the Floodway Fringe Protected or Unprotected Area.

14. That the proposed development is in-fill development.

15. That the proposed development is for reconstruction and addition to an existing structure.

16. The requested variance is for improvements to structures that are designed to comply with cited State health and unsafe building conditions.

C. The Board of Zoning Appeals may grant such variances only where the following conditions are met:

1. In all cases a public hearing will be held as provided in Chapter 33 with required statutory notice provided.

2. In an in-fill situation, the structure or use is located on a lot one-half acre or less in size and is contiguous to and surrounded by lots with existing structures constructed below the regulatory flood elevation.

3. The variance must not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of this article will

result in unnecessary hardship including extreme hardship to the property owner, and so that the spirit of this article shall be observed and substantial justice done.

4. All possible efforts are made to minimize potential flood damages.
5. The variance must be designed so as to cause the least amount of potential damage considering the factors set forth in Section 33.46B.
6. The Board will require in each case a written waiver of liability (as more fully set forth in Section 33-47) from the owners and developers if the developers are different from the owners.
7. If the proposed development is in Floodway, it must be shown that this will not result in an increased flood elevation.

~~8.~~

D. If the Board grants a variance according to the above, it must give notice to the applicant. This written notice shall include:

1. The fact that the proposed structure will be located in a flood plain area.
2. The ~~100 year flood~~ Regulatory Flood Profile elevation and the number of feet that the lowest floor of the proposed structure will be below that ~~100 year flood level~~ regulatory flood profile elevation.

8. Variances may be granted without regard to the procedures set forth in this ordinance on the following:
i. For structures on which reconstruction, rehabilitation or restoration is proposed is listed on the National Register of Historic Places or State Inventory of Historic Places.

3. The fact that the flood insurance rates will be greatly increased commensurate with the distance below the 100 year flood level regulatory flood profile elevation.

attached to the building permit and must be

This notice shall be recorded by the property owner in the Office of the County Recorder and attached to the building permit and displayed with it.

Section 33-47. WARNING AND DISCLAIMER OF LIABILITY

The degree of flood protection required by this article is considered reasonable for regulatory purposes and is based on engineering and scientific consideration. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes, such as ice or debris jams. This article does not imply that areas outside the Flood Plain District as defined herein, will be free from flooding or flood damages. This article does not create liability on the part of the State of Indiana, the Indiana Department of Natural Resources, the Board of Zoning Appeals, the Plan Commission of the City of Fort Wayne, or any elected or appointed official or employee thereof for any flood damages that result from reliance on this article or any administrative decision lawfully made thereunder. No Improvement Location Permit nor Certificate of Occupancy shall be granted for any development or any other kind of work in an area covered by this article unless the applicant first executes a document upon forms provided by the City holding

the City and State harmless and waiving the City's and State's liability for any flood damage.

Section 33-48. ENFORCEMENT

- A. It shall be the duty of the Zoning Enforcement Officer to enforce the provisions of this article in accordance with the powers provided by this article, all other provisions of this article, and in accordance with the laws of the State of Indiana.
- B. All departments, officials and employees of the City which are vested with the duty of authority to issue permits or licenses shall conform to the provisions of this article and shall issue no permit or license for any use, building or purpose if the same would be in conflict with the provisions of this article.

Section 33-49. PENALTIES

- A. Any person, whether as principal, agent, owner, lessee, tenant, contractor, builder, architect, engineer or otherwise who violates any provision of this article shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than ten dollars nor more than three hundred dollars for each offense. Each day of the existence of any violation of this article shall be a separate offense.

B. The erection, construction, enlargement, conversion, moving or maintenance of any building or structure and the use of any land contrary to the provisions of this article is hereby declared to be a nuisance and in violation of this article and unlawful. The Plan Commission, by its Zoning Enforcement Officer, may institute a suit for injunction in the Circuit Court or any Superior Court of the County to restrain any person or governmental unit from violating any provision of this article and to cause such violation to be prevented, abated or removed. Such action may also be instituted by any property owner who is or may

be damaged by the violation of any provision of this article.

C. The remedies provided for in this section shall be cumulative and not exclusive and shall be addition to any other remedies provided by law.

Section 33-50. SEVERABILITY

If any section, clause, provision, or portion of this Article is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Article shall not be affected thereby.

COUNCILMEMBER

APPROVED AS TO FORM AND LEGALITY:

BRUCE O. BOXBERGER, CITY ATTORNEY

Bill No. G-85-03-01

(as amended)

GENERAL ORDINANCE NO. _____

AN ORDINANCE amending Chapter 33 of the
Municipal Code of the City of Fort Wayne,
Indiana.

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF FORT
WAYNE, INDIANA:

SECTION 1. Article X, Section 33-41 to Section 33-52
are repealed and the following is hereby enacted.

SECTION 2. That this Ordinance shall be in full force
and effect from and after its passage and approval by the Mayor.

ARTICLE X - FLOOD PLAIN DISTRICT

Section 33-41. GENERAL CRITERIA FOR FLOOD PLAIN REGULATIONS

A. Objectives - The objective of this article is to provide
sound flood plain regulation for Fort Wayne's rivers and
streams in order better to:

1. Protect human life and health.
2. Protect individuals from buying lands and structures
which are unsuited for intended purposes because of
flood hazards.
3. Provide for public awareness of the flooding poten-
tial.
4. Minimize public and private property damage.
5. Minimize surface and groundwater pollution which will
affect human, animal, or plant life.

6. Control flood plain uses such as filling, dumping, storage of material, structures, buildings, and any other which, acting alone or in combination with other existing or future uses, might cause damaging flood heights and velocities by obstructing flows and reducing water storage capacity.
7. Control development which will, when acting alone or in combination with other development or features, create an unjustified vulnerability to floods, flood damage, and an additional burden to the public to pay the costs of rescue, relief, emergency preparedness measures, sandbagging, pumping, and temporary dikes or levees.
8. Control development which will, when acting alone or in combination with other development or features, create an additional burden to the public for business interruptions, factory closings, disruption of transportation routes, interference with utility services, and other factors that result in loss of wages, sales, production, and tax write-offs.
9. Help maintain a stable tax base by the preservation or enhancement of property values for future flood plain development.
10. Minimize areas of the flood plain that are blighted by floods so that property values in and adjacent to the flood plain will be preserved.

11. Maximize the use of flood plains for parks, open spaces, and public recreation purposes.

Section 33-42. DEFINITIONS

Whenever used or referred to in this ordinance unless a different meaning appears from the context.

- A. Development - any man-made change to improved or unimproved real estate, including but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operations.
- B. Flood or Floodwater - the water of any river, stream or lake which is above the bank and/or outside the channel and banks of such river, stream, or lake.
- C. Flood Plain - the area adjoining a river, stream, or lake which has been or may hereafter be covered by floodwater and consists of all floodway, floodway fringe unprotected, and floodway fringe protected areas that are subject to flooding by the regulatory flood. This area is shown as unnumbered A-Zones on the Federal Insurance Rate Maps.
- D. Flood-Proofing - a combination of structural provisions, changes, or adjustments to properties and structures subject to flood primarily for the reduction or elimination of flood damages to properties, water and sanitary facilities, structures, and contents of buildings in a flood plain.

- E. Flood-Proofed Building - a commercial or industrial building designed to exclude floodwater from the interior of that building. All such flood-proofing shall be adequate to withstand the flood depths, pressures, velocities, impact and uplift forces and other factors associated with the regulatory flood.
- F. Flood Protection Grade - (i) nonflood-proofed buildings: the elevation of the lowest floor of a building or structure. If a building contains a basement, the basement floor is considered the lowest floor. (ii) flood-proofed building: if a building is flood-proofed as hereinafter defined, the term "flood protection grade" applies to the water surface elevation for which the building is protected.
- G. Floodway Area (FW) - The channel of a river or stream and those portions of the flood plain adjoining the channel that are determined by the Indiana Department of Natural Resources and FEMA as necessary to carry and discharge the regulatory flood of any channel, water course or flood plain.
- H. Floodway Fringe (FF) - means those portions of the flood plain lying outside the floodway area.
- I. Floodway Fringe Unprotected Area (FFU) - That portion of the flood plain lying outside of the floodway which is not included in the Floodway Fringe Protected Area.
- J. Floodway Fringe Protected Area (FFP) - That portion of the flood plain lying outside of the floodway and determined

by the City Department charged with floodwater control to be reasonably protected from floodwaters so that the chances of flooding are minimized. The Floodway Fringe Protected areas shall be approved by the Indiana Department of Natural Resources and will be shown on an overlay district map maintained by the City.

- K. In-fill - new construction or substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the regulatory flood elevation.
- L. Obstruction - structure, object or other matter in, along, across, or projecting into any channel, water course or flood plain river or stream, or flood hazard area which may impede, retard, or change the direction of the flow of water.
- M. Regulatory Flood - a flood having a peak discharge which can be expected to be equalled or exceeded on the average of once in a 100-year period, as calculated by a method and procedure which is acceptable to and provided by the Indiana Department of Natural Resources. The regulatory flood has a 1 percent probability of occurring in any given year.
- N. Regulatory Flood Profile - a longitudinal profile along the thread of a stream showing the maximum water surface elevations attained by the regulatory flood.
- O. Regulatory Floodway - the channel of a river or stream

and those portions of the flood plain adjoining the channel which are reasonably required to efficiently carry and discharge the peak flow of the regulatory flood of any channel or watercourse.

- P. River or Stream - all open channels, whether natural, man-made, or modified by man, which carry or discharge water.
- Q. Structure - walled and roofed buildings, including gas or liquid storage tanks, and mobile homes that are principally above ground.

Section 33-43. FLOOD PLAIN DISTRICT BOUNDARIES

The areal extent of the flood plain area shall include all land subject to inundation by the regulatory flood as shown on maps prepared by the Federal Emergency Management Agency in a scientific and engineering report entitled "The Flood Insurance Study for the City of Fort Wayne, Indiana" dated April 3, 1985, with accompanying Flood Boundary-Floodway Maps along with any subsequent revisions to text or maps. In cases where the floodway, floodway fringe, peak discharge and regulatory profile have not been provided by the Federal Emergency Management Agency, this data shall be determined and approved by the Indiana Department of Natural Resources utilizing the best available technology. In addition to the Flood Insurance Study Maps, any maps prepared or supplied by the Department of Natural Resources which allow for a better flood plain delineation shall be used by the Zoning Enforcement Officer provided that these maps shall be at least as restrictive as the FIS maps. Amendments to the text of Flood

Plain District and FIS maps can be made provided that no change will be made in the delineation of flood plain, floodway, or regulatory flood elevation and the text of Flood Plain District without the prior approval of FEMA.

**Section 33-44 PROCEDURES FOR DEVELOPMENT IN FLOOD PLAIN
DISTRICTS**

- A. No development in the Flood Plain Districts shall take place unless the Zoning Enforcement Officer first grants an Improvement Location Permit. The Zoning Enforcement Officer shall review all applications for Improvement Location Permits for development including new construction, additions to existing construction, or other development to ascertain whether the proposed development lies in the Flood Plain District. If the Permit Application pertains to property in the Flood Plain District, then the applicant must meet the following criteria before receiving an Improvement Location Permit and Certificate of Occupancy.

- B. In the enforcement of this article and in granting permits and certificates, the Division of Community Development and Planning shall assure that all of the standards contained in 44 CFR, Section 60.3 Subsection (d) and Indiana Department of Natural Resources requirements pertaining to state and federal permits, building permit review, subdivision review, flood-proofing nonresidential structures, mobile home tie down standards, utility construction, record keeping (including lowest floor elevation) and stream and

river alteration and maintenance have been met.

1. Record Keeping - For every permit issued in the flood plain, record shall be kept of the 100-year flood elevation at that location, and the elevation of the lowest floor of the structure as designed and built.
2. Record Keeping for Nonresidential Building - The developer shall provide as part of an application for an Improvement Location Permit a certificate from a registered professional engineer or architect who shall certify that the flood-proofing methods are adequate to withstand the flood depths, pressures, velocities, impact and uplift forces and other factors associated with the regulatory flood. A record of such certificates indicating the specific elevation (in relation to mean sea level) to which such structures are flood-proofed shall be maintained with the Division of Community Development and Planning.

C. Procedures for development within the floodway

1. There will be no development of any kind that will increase the regulatory flood elevation including any structure, fill, deposit or obstruction within those portions of the floodway which are currently undeveloped, except necessary public utilities, construction for flood control purposes, and for the use of parks, open spaces, and public recreation.
2. If an application for an Improvement Location Permit

lies in an identified floodway, then the Zoning Enforcement Officer shall deny the permit, except that applications for parks, open spaces, public recreation, necessary public utilities, devices for flood control purposes, enlargement, expansion or alteration or nonconforming use and rebuilding of any structure damaged by flood, fire, explosion, act of God, or the public enemy shall be forwarded to the Board of Zoning Appeals for a variance in accordance with the procedures set forth in Sections 33-45 and 33-46.

3. Expansions of legal nonconforming uses shall be permitted only as provided in Section 33-45.
4. No new structures and enlargements or expansion of legal nonconforming use shall be permitted within the floodway areas.

D. Procedures for development within the floodway fringe:

1. For residential structures the lowest floor including the basement must be at least two (2) feet above the regulatory flood elevation.
2. For nonresidential structures the lowest floor including the basement must be at least two (2) feet above the regulatory flood elevation or adequate flood-proofing techniques must be used to that elevation.
3. All structures to be erected or expanded in the floodway fringe shall have a low flooddamage potential.

4. The structure or structures, if permitted, shall be constructed and placed on the building site so as to offer the minimum obstruction to the flow of floodwaters.

(i) Whenever possible, structures shall be constructed with the longitudinal axis parallel to the direction of the flow of floodwaters.

(ii) So far as practicable, structures shall be placed approximately on the same flood flow lines as those of adjoining structures.

5. Structures shall be firmly anchored to prevent flotation which may result in damage to other structures, restriction of bridge openings, and blockage of other narrow sections of the stream or river.

6. Utility equipment such as electrical and heating equipment shall be constructed at least two (2) feet above the regulatory flood elevation for the particular area, unless the building is flood-proofed.

E. Storage of material and equipment in the Floodway Fringe shall be governed by the following:

1. The storing or processing of materials that are in time of flooding buoyant, flammable, explosive, or could be injurious to human, animal, or plant life is prohibited.

2. Storage of other material or equipment may be allowed

if not subject to major damage by floods and if firmly anchored to prevent flotation.

F. Fill: Fill will be permitted only in the floodway fringe areas and only in accordance with the following procedures:

1. For any fill proposed to be deposited in the floodway fringe, it must be shown that the advantages outweigh the detriment caused by the fill and to be of some beneficial purpose. The amount of the fill shall not be greater than is shown on a plan submitted by the owner showing the uses to which the filled land will be put and the final dimensions of the proposed fill. All fill placed within the floodway fringe shall be obtained from other areas within the flood plain. The location within the flood plain from which the fill is taken shall be graded and seeded to prevent erosion and sedimentation.
2. Such fill or other material shall be protected against erosion by riprap, vegetation cover, or bulkheading.

G. The Director of the Division of Community Department and Planning or his/her representative, may attach such conditions in the granting of Improvement Location Permits and Certificate of Occupancy Permits as it deems necessary to further the purpose of this article. Any decision of the Director of the Division of Community Development and Planning or his/her representative, may be appealed to the Board of Zoning Appeals.

Section 33-45 NONCONFORMING USES.

- A. All land uses existing at the time of adoption of this article in flood plain areas not in full compliance with this article shall be considered nonconforming uses.
- B. Except for normal repair and maintenance, there shall be no enlargement or expansion of a building which constitutes a legal nonconforming use within the floodway area.
- C. Except for normal repair and maintenance, any structure which constitutes a legal nonconforming use within the floodway fringe may be altered, enlarged, or extended, on a one-time basis at the existing grade and floor elevations provided that other requirements of Section 33-44 are met, and such alterations, enlargements or extensions do not increase the value of the structure, excluding the value of the land, by more than forty percent (40%) of its pre-improvement market value. If the enlargement, extension or alteration is greater than 40% of its pre-improvement market value, it is permitted as long as the alterations, enlargements or extensions are permanently changed to a conforming use as to the grade and floor elevations and other requirements in accordance with the procedures for development in Section 33-44.
- D. Any structure which constitutes a legal nonconforming use which is damaged by flood, fire, explosion, act of God, the public enemy, other disaster or accident, may be restored to its original dimensions and condition at the existing grade and flood elevations, provided the damage has not reduced the value of the building, excluding the value

of the land, by more than forty percent (40%) of its pre-damaged market value. If the structure is damaged more than forty percent (40%) of its pre-damaged market value, then the structure can be reconstructed or repaired only if permanently changed to a conforming use as to the grade and floor elevations and other requirements in accordance with the procedures for development in Section 33-44.

- E. Any repairs, alterations, enlargements, or extensions of any existing legal nonconforming use which use does not involve a structure, is subject to the provisions of this article.

Section 33-46. VARIANCES

- A. If this article prohibits a proposed development in a flood plain area, a person seeking such use or development may apply to the Board of Zoning Appeals for a variance from the provisions of this article, except for a new development and expansion or enlargement of legal nonconforming use in the floodway. Prior to the Board of Zoning Appeals consideration of the variance request for a variance in the floodway, the application for the variance shall be forwarded to the Indiana Department of Natural Resources for review and comment. All terms and conditions imposed or recommended by the Indiana Department of Natural Resources shall be incorporated into the issuance of any variance and subsequent permit.

- B. In determining whether to grant a variance, the Board of

Zoning Appeals shall consider the following matters along with the other provisions of this article:

1. The danger to life and property due to increased flood heights or velocities caused by encroachments.
2. The danger that materials may be swept on to other lands or downstream to the injury of others.
3. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination and unsanitary conditions as affected by the variance.
4. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners.
5. The importance of the services provided by the proposed facility to the community.
6. The requirements of the facility for a waterfront location.
7. The availability of alternative locations not subject to flood for the proposed use.
8. The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.

9. The relationship of the proposed use to the Comprehensive Plan and flood plain management program for the area.
 10. The safety of access to the property in time of flood for ordinary and emergency vehicles.
 11. The projected height, velocity, duration, rate of rise and sediment transport of the floodwaters expected at the site.
 12. The structure on which reconstruction, rehabilitation or restoration is proposed is listed on the National Register of Historic Places, or State, or Local Inventory of Historic Places.
 13. Whether the subject property is located in the Floodway Fringe Protected or Unprotected Area.
 14. That the proposed development is in-fill development.
 15. That the proposed development is for reconstruction and addition to an existing structure.
- C. The Board of Zoning Appeals may grant such variances only where the following conditions are met:
1. In all cases a public hearing will be held as provided in Chapter 33 with required statutory notice provided.
 2. In an in-fill situation, the structure or use is located

on a lot one-half acre or less in size and is contiguous to and surrounded by lots with existing structures constructed below the regulatory flood elevation.

3. The variance must not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of this article will result in unnecessary hardship including extreme hardship to the property owner, and so that the spirit of this article shall be observed and substantial justice done.
4. All possible efforts are made to minimize potential flood damages.
5. The variance must be designed so as to cause the least amount of potential damage considering the factors set forth in Section 33.46B.
6. The Board will require in each case a written waiver of liability (as more fully set forth in Section 33-47) from the owners and developers if the developers are different from the owners.
7. If the proposed development is in Floodway, it must be shown that this will not result in an increased flood elevation.
8. Variances may be granted without regard to the procedures set forth in this ordinance on the following:
 - i. For structure on which reconstruction, rehabili-

tation or restoration is proposed is listed on the National Register of Historic Places or State Inventory of Historic Places.

- ii. For improvements to structures that are designed to comply with cited State health and unsafe building violations.

D. If the Board grants a variance according to the above, it must give notice to the applicant. This written notice shall include:

1. The fact that the proposed structure will be located in a flood plain area.
2. The 100-year flood elevation and the number of feet that the lowest floor of the proposed structure will be below the 100-year flood level.
3. The fact that the flood insurance rates will be greatly increased commensurate with the distance below the 100-year flood level.

This notice shall be attached to the building permit and must be displayed with it.

Section 33-47 WARNING AND DISCLAIMER OF LIABILITY

The degree of flood protection required by this article is considered reasonable for regulatory purposes and is based on engineering and scientific consideration. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made

tation or restoration is proposed is listed on the National Register of Historic Places or State Inventory of Historic Places.

- ii. For improvements to structures that are designed to comply with cited State health violations.

D. If the Board grants a variance according to the above, it must give notice to the applicant. This written notice shall include:

1. The fact that the proposed structure will be located in a flood plain area.
2. The 100-year flood elevation and the number of feet that the lowest floor of the proposed structure will be below the 100-year flood level.
3. The fact that the flood insurance rates will be greatly increased commensurate with the distance below the 100-year flood level.

This notice shall be attached to the building permit and must be displayed with it.

Section 33-47 WARNING AND DISCLAIMER OF LIABILITY

The degree of flood protection required by this article is considered reasonable for regulatory purposes and is based on engineering and scientific consideration. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made

or natural causes, such as ice or debris jams. This article does not imply that areas outside the Flood Plain District as defined herein, will be free from flooding or flood damages. This article does not create liability on the part of the State of Indiana, the Indiana Department of Natural Resources, the Board of Zoning Appeals, the Plan Commission of the City of Fort Wayne, or any elected or appointed official or employee thereof for any flood damages that result from reliance on this article or any administrative decision lawfully made thereunder. No Improvement Location Permit nor Certificate of Occupancy shall be granted for any development or any other kind of work in an area covered by this article unless the applicant first executes a document upon forms provided by the City holding the City and State harmless and waiving the City's and State's liability for any flood damage.

Section 33-48. ENFORCEMENT

- A. It shall be the duty of the Zoning Enforcement Officer to enforce the provisions of this article in accordance with the powers provided by this article, all other provisions of this article, and in accordance with the laws of the State of Indiana.
- B. All departments, officials and employees of the City which are vested with the duty of authority to issue permits or licenses shall conform to the provisions of this article and shall issue no permit or license for any use, building or purpose if the same would be in conflict with the provisions of this article.

Section 33-49. PENALTIES

- A. Any person, whether as principal, agent, owner, lessee, tenant, contractor, builder, architect, engineer or otherwise who violates any provision of this article shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than ten dollars nor more than three hundred dollars for each offense. Each day of the existence of any violation of this article shall be a separate offense.

- B. The erection, construction, enlargement, conversion, moving or maintenance of any building or structure and the use of any land contrary to the provisions of this article is hereby declared to be a nuisance and in violation of this article and unlawful. The Plan Commission, by its Zoning Enforcement Officer, may institute a suit for injunction in the Circuit Court or any Superior Court of the County to restrain any person or governmental unit from violating any provision of this article and to cause such violation to be prevented, abated or removed. Such action may also be instituted by any property owner who is or may be damaged by the violation of any provision of this article.

- C. The remedies provided for in this section shall be cumulative and not exclusive and shall be addition to any other remedies provided by law.

Section 33-50. SEVERABILITY

If any section, clause, provision, or portion of this Article is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Article shall not be affected thereby.

COUNCILMEMBER

APPROVED AS TO FORM AND LEGALITY:

BRUCE O. BOXBERGER, CITY ATTORNEY

Date March 19, 1985

To: Councilman Charles Redd

Subject: Flood Plain Ordinance Changes

The Federal Emergency Management Agency has requested that you make the changes on pages 11, 12, 13 and 15 as noted.

VCS/sjh

- 1 2. Storage of other material or equipment may be allowed
2 if not subject to major damage by floods and if firmly
3 anchored to prevent flotation.

4 F. Fill: Fill will be permitted only in the floodway fringe
5 areas and only in accordance with the following
6 procedures:

- 7
8 1. For any fill proposed to be deposited in the floodway
9 fringe, it must be shown that the advantages outweigh
10 the detriment caused by the fill and to be of some
11 beneficial purpose. The amount of the fill shall
12 not be greater than is shown on a plan submitted by
13 the owner showing the uses to which the filled land
14 will be put and the final dimensions of the proposed
15 fill. All fill placed within the floodway and floodway
16 fringe shall be obtained from other areas within the
17 flood plain. The location within the flood plain from
18 which the fill is taken shall be graded and seeded
19 to prevent erosion and sedimentation.

- 20
21 2. Such fill or other material shall be protected against
22 erosion by riprap, vegetation cover, or bulkheading.

23
24
25 G. The Director of the Division of Community Department and
26 Planning or his/her representative, may attach such condi-
27 tions in the granting of Improvement Location Permits and
28 Certificate of Occupancy Permits as it deems necessary
29 to further the purpose of this article. Any decision of
30 the Director of the Division of Community Development and
31 Planning or his/her representative, may be appealed to

1 the Board of Zoning Appeals.

2
3
4 **Section 33-45 NONCONFORMING USES.**

5
6 A. All land uses existing at the time of adoption of this
7 article in flood plain areas not in full compliance with
8 this article shall be considered nonconforming uses.

9
10 B. Except for normal repair and maintenance, there shall be
11 no enlargement or expansion of a building which constitutes
12 a legal nonconforming use within the floodway area.

13
14 C. Except for normal repair and maintenance, any structure
15 which constitutes a legal nonconforming use within the
16 floodway fringe may be altered, enlarged, or extended,
17 on a one-time basis at the existing grade and floor elevations
18 provided that other requirements of Section 33-44 are met,
19 and such alterations, enlargements or extensions do not
20 increase the value of the structure, excluding the value
21 of the land, by more than forty percent (40%) of its pre-im-
22 provement market value. If the enlargement, extension or
23 alteration is greater than 40% of its pre-improvement market
24 value, it is permitted as long as the alterations, enlarge-
25 ments or extensions are in conformance with this article
26 and are not otherwise prohibited or restricted by Federal
27 or State law or regulations or ordinance and local regula-
28 tions.

DELETE AND INSERT THE
FOLLOWING:

29
30 D. Any structure which constitutes a legal nonconforming use
31 which is damaged by flood, fire, explosion, act of God,
32

12

INSERT

If the structure is damaged more than forty percent (40%) of its pre-damaged market value, then the structure can be reconstructed or repaired only if permanently changed to a conforming use as to the grade and floor elevations and other requirements in accordance with the procedures for development in Section 33-44.

1 the public enemy, other disaster or accident, may be restored
2 to its original dimensions and condition at the existing
3 grade and flood elevations, provided the damage has not
4 reduced the value of the building, excluding the value
5 of the land, by more than forty percent (40%) of its pre-damaged
6 market value. If the structure is damaged more than forty
7 percent (40%) of its pre-damaged market value, then the
8 structure can be reconstructed or repaired only if permanently
9 changed to a conforming use as to the grade and floor elevations
10 and other requirements in accordance with the procedures
11 for development in Section 33-44.

- 12
13
14 E. Any repairs, alterations, enlargements, or extensions of
15 any existing legal nonconforming use which use does not
16 involve a structure, is subject to the provisions of this
17 article.

18
19 **Section 33-46. VARIANCES**

- 20
21 A. If this article prohibits a proposed development in a flood
22 plain area, a person seeking such use or development may
23 apply to the Board of Zoning Appeals for a variance from
24 the provisions of this article, except for a new development
25 and expansion or enlargement of legal nonconforming use
26 in the floodway. Prior to the Board of Zoning Appeals
27 consideration of the variance request for a variance in
28 the floodway, the application for the variance shall be
29 ~~DELETE~~ forwarded to the Indiana Department of Natural Resources
30 for review and comment. All terms and conditions imposed,
31 or recommended by the Indiana Department of Natural Resources

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32

8. The compatibility of the proposed use with existing development and development anticipated in the foreseeable future.
 9. The relationship of the proposed use to the Comprehensive Plan and flood plain management program for the area.
 10. The safety of access to the property in time of flood for ordinary and emergency vehicles.
 11. The projected height, velocity, duration, rate of rise and sediment transport of the floodwaters expected at the site.
 12. The structure on which reconstruction, rehabilitation or restoration is proposed is listed on the National Register of Historic Places, or State, or Local Inventory of Historic Places. DELETE
 13. Whether the subject property is located in the Floodway Fringe Protected or Unprotected Area.
 14. That the proposed development is in-fill development.
 15. That the proposed development is for reconstruction and addition to an existing structure.
- C. The Board of Zoning Appeals may grant such variances only where the following conditions are met: